

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

FEB 16 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Second Application by BellSouth Corporation,
BellSouth Telecommunications, Inc., and
BellSouth Long Distance, Inc., for Provision
of In-Region, InterLATA Services in
Louisiana

CC Docket No. 98-121

To: The Commission

**BELLSOUTH'S REPLY TO AXESSA'S MOTION FOR LEAVE TO FILE
LATE COMMENTS ON BELLSOUTH'S PETITION FOR RECONSIDERATION**

Columbia Telecommunications, Inc. d/b/a aXessa ("aXessa") has sought leave to file grossly untimely comments in opposition to BellSouth's Petition for Reconsideration.¹ aXessa has failed to offer any meaningful explanation as to why its comments are almost two months late, or any reason why the Commission should overlook the deadline. aXessa's late comments – which are nothing more than an attempt to gain visibility for baseless claims already put before the Louisiana PSC – are also unfounded. They are premised on aXessa's stubborn refusal to acknowledge the terms of its own interconnection agreement, and ignore BellSouth's repeated offers to consider any legal interconnection arrangement proposed by aXessa.

I. AXESSA'S MOTION TO INTERVENE IS UNTIMELY

Responses to petitions for reconsideration of the Second Louisiana Order were due on December 15, 1998. Petitions for Reconsideration and Clarification of Action in Rulemaking

¹ Motion for Leave to File Annexed Opposition to BellSouth's Petition for Reconsideration, Second Application of BellSouth Corp. et al. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121 (filed Feb. 4, 1999) ("aXessa Motion").

Proceedings, 63 Fed. Reg. 65792 (1998). As justification for its untimely filing, aXessa states that it was engaged in “ongoing” negotiations with BellSouth, and that only in January 1999 did it conclude that its negotiations with BellSouth had “irrevocably” broken down. aXessa Motion at 2. This explanation begs the question. The status of inter-carrier negotiations in 1999 has nothing to do with this Commission’s consideration of BellSouth’s second Louisiana application on the record before the Commission in 1998.

The Commission has held that parties cannot file evidence that post-dates the filing date of a section 271 application, nor may they “incorporate by reference . . . entire documents or significant portions of documents that were filed in other proceedings.” See Public Notice, Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act, 12 FCC Rcd 18590, 18595 (1997). aXessa’s pleading violates both of these rules. It consists of little more than aXessa’s thirty-page state complaint (along with eight pages of exhibits) to the Louisiana PSC, a complaint that was filed months after BellSouth had filed its section 271 application. The pleading is nothing but a rather obvious attempt to place before this Commission aXessa’s complaint to the state commission, in the hope of putting pressure on BellSouth to cave in to aXessa’s baseless position.

II. AXESSA’S CONTENTIONS ARE NOT SUPPORTED BY THE FACTS

aXessa alleges that BellSouth requires collocation as the sole method of access to UNEs, even though BellSouth has repeatedly stated that it will negotiate, through the Bona Fide Request process, other methods of access that are technically feasible and consistent with applicable legal rules. See BellSouth’s Petition for Reconsideration and Clarification at 9 (filed Nov. 12, 1998); BellSouth’s Reply in Support of its Petition for Reconsideration at 5-6 (filed Dec. 28, 1998). As factual support for its assertion, aXessa offers its own self-described “futile” attempts to obtain

access through a method other than collocation. aXessa Motion at 2. However, aXessa fails to disclose a number of critical facts that defeat this contention.

aXessa's interconnection agreement provides that either virtual collocation or physical collocation are acceptable methods of access. BellSouth therefore informed aXessa that it must obtain access to network elements through the collocation methods specified in its agreement. BellSouth repeatedly offered to negotiate with aXessa other lawful methods of access, through the Bona Fide Request process. Indeed, BellSouth has offered again and again to meet with aXessa to explore such possibilities. BellSouth's offer to enter into such negotiations further confirms BellSouth's willingness to consider lawful methods of access other than collocation. BellSouth cannot be held responsible for aXessa's failure to avail itself of this offer.

By filing a complaint with the Louisiana PSC, aXessa acknowledged that it is the relevant state commission, and not this Commission, that is responsible for interpreting BellSouth's obligations under its interconnection agreement with aXessa. See Iowa Utils. Bd. v. FCC, 120 F.3d 753, 803 (8th Cir. 1997) (overturning FCC's assertion of power to enforce agreements approved by state commissions), rev'd in relevant part sub nom. AT&T v. Iowa Utils. Bd., 67 U.S.L.W. 4104, slip op. at 18 (U.S. Jan. 25, 1999 (Nos. 97-826 et al.)) (finding challenge to FCC's assertion of jurisdiction not yet ripe). Having properly submitted its carrier-specific dispute to the appropriate state commission, there is no basis for aXessa to seek federal involvement in this dispute under the guise of a responsive pleading.

CONCLUSION

aXessa's motion should be denied as untimely and in violation of this Commission's rules. However, if this Commission grants aXessa's motion to accept the late pleading, BellSouth should be allowed a full opportunity to respond to aXessa's comments.

Respectfully submitted,



MICHAEL K. KELLOGG

AUSTIN C. SCHLICK

WILLIAM B. PETERSEN

KELLOGG, HUBER, HANSEN,

TODD & EVANS, P.L.L.C.

1301 K Street, N.W.

Suite 1000 West

Washington, D.C. 20005

(202) 326-7900

*Counsel for BellSouth Corporation,
BellSouth Telecommunications, Inc., and
BellSouth Long Distance, Inc.*

CHARLES R. MORGAN

WILLIAM B. BARFIELD

JIM O. LLEWELLYN

1155 Peachtree Street, N.E.

Atlanta, GA 30367

(404) 249-2051

DAVID G. FROLIO

1133 21st Street, N.W.

Washington, D.C. 20036

(202) 463-4182

Counsel for BellSouth Corporation

JAMES G. HARRALSON

28 Perimeter Center East

Atlanta, GA 30346

(770) 352-3116

Counsel for BellSouth Long Distance, Inc.

MARGARET H. GREENE

R. DOUGLAS LACKEY

STEPHEN M. KLIMACEK

675 W. Peachtree Street, N.E.

Suite 4300

Atlanta, GA 30375

(404) 335-0764

*Counsel for BellSouth Telecommunications,
Inc.*

February 16, 1999

CERTIFICATE OF SERVICE

I, Michelle Dawson, hereby certify that on this 16th day of February 1999, I caused copies of BellSouth's Reply to aXessa's Motion for Leave To File Late Comments on BellSouth's Petition for Reconsideration to be served via first-class United States mail upon all parties on the attached service list, except those parties designated with an asterisk, who will be served by hand.



Michelle Dawson

SERVICE LIST

FCC Docket No. 98-121

Federal Communications Commission	<p>*Magalie Salas Office of the Secretary Federal Communications Commission 445 12th Street, N.W. Washington, DC 20554</p> <p>*Janice Myles Policy and Program Planning Division Common Carrier Bureau Federal Communications Commission Room 544 1919 M Street, N.W. Washington, DC 20554</p>
U.S. Department of Justice	<p>Donald J. Russell (5 copies) U.S. Department of Justice Antitrust Division, City Center Building 1401 H Street, N.W., Suite 8000 Washington, DC 20530</p>
Louisiana Public Service Commission	<p>Lawrence St. Blanc Executive Secretary Louisiana Public Service Commission P.O. Box 91154 Baton Rouge, LA 70821</p>
ITS	<p>*ITS 1231 20th Street, N.W. Washington, DC 20036</p>
Alliance for Public Technology	<p>Jennings Bryant Donald Vial Alliance for Public Technology 901 15th Street, N.W. Washington, DC 20005</p>

American Council on Education;
National Association of College and
University Business Officers; and
Management Education Alliance

Sheldon Elliott Steinbach
Vice President & General Counsel
American Council on Education
One Dupont Circle, N.W.
Washington, DC 20036

Christine E. Larger
Director, Public Policy and
Management Programs
National Association of College and
University Business Officers
2501 M Street, N.W.
Washington, DC 20037

Francis J. Aguilar
Executive Director
Management Education Alliance
Cumnock 300
Boston, MA 02163

Ameritech

Kelly R. Welsh
John T. Lenahan
Gary L. Phillips
Ameritech
30 South Wacker Drive
Chicago, IL 60606

Theodore A. Livingston
John E. Muench
Dennis G. Friedman
Christian F. Binnig
Mayer, Brown & Platt
190 South LaSalle Street
Chicago, IL 60603

Association for Local Telecommunications
Services

Richard J. Metzger
Emily M. Williams
Association for Local Telecommunications
Services
888 17th Street, N.W.
Washington, DC 20006

AT&T

Mark C. Rosenblum
Leonard J. Cali
Roy E. Hoffinger
Stephen C. Garavito
AT&T Corp.
295 North Maple Avenue
Basking Ridge, NJ 07920

*David W. Carpenter
Mark E. Haddad
Joseph R. Guerra
Richard E. Young
Michael J. Hunseder
Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006

aXessa

Kenneth E. Hardman
Moir & Hardman
1828 L Street, N.W., Suite 901
Washington, DC 20036-5104

Competition Policy Institute

Ronald Binz
Debra Berlyn
John Windhausen
Competition Policy Institute
1156 15th Street, N.W., Suite 310
Washington, DC 20005

Competitive Telecommunications Association

Genevieve Morelli
Executive V.P. and General Counsel
The Competitive Telecommunications
Association
1900 M Street, N.W.
Suite 800
Washington, DC 20036

Danny E. Adams
Steven A. Augustino
Melissa M. Smith
Kelley Drye & Warren LLP
1200 Nineteenth Street, N.W., Suite 500
Washington, DC 20036

Cox Communications, Inc.

Laura H. Phillips
J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036

e.spire Communications

Riley M. Murphy
Executive Vice President
and General Counsel
James C. Falvey
Vice President - Regulatory Affairs
e.spire Communications, Inc.
131 National Business Parkway
Suite 100
Annapolis Junction, MD 20701

Brad E. Mutschelknaus
John J. Heitmann
Kelley Drye & Warren LLP
1200 Nineteenth Street, N.W.
Suite 500
Washington, DC 20036

Excel

James M. Smith
Vice President,
Law & Public Policy
Excel Telecommunications, Inc.
1133 Connecticut Avenue, N.W.
Suite 750
Washington, DC 20036

Dana Frix
Robert V. Zener
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007

Hyperion Telecommunications, Inc.

Janet S. Livengood, Esquire
Director of Regulatory Affairs
Hyperion Telecommunications, Inc.
DDI Plaza Two
500 Thomas Street
Suite 400
Bridgeville, PA 15017-2838

Dana Frix
Douglas G. Bonner
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, DC 20007-5116

Intermedia Communications Inc.

Jonathan E. Canis
Enrico C. Soriano
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, DC 20036

Keep America Connected!;
National Association of Commissions
for Women; National Hispanic Council
on Aging; and United Homeowners Assoc.

Angela Ledford
Keep America Connected
P.O. Box 27911
Washington, DC 20005

Camille Failla Murphy
National Association of Commissions
For Women
8630 Fenton Street
Silver Spring, MD 20901

Thomasa C. Rosales
National Hispanic Council on Aging
2713 Ontario Road, NW, Suite 200
Washington, DC 20009

Jordan Clark
United Homeowners Association
655 15th Street, NW, Suite 460
Washington, DC 20005

KMC

Mary C. Albert
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

Robert E. Litan and Roger G. Noll

Robert E. Litan
The Brookings Institution
1775 Massachusetts Avenue, NW
Washington, DC 20036

Roger G. Noll
Professor of Economics
Stanford University
Stanford, CA 94305

MCI

Jerome L. Epstein
Marc A. Goldman
Paul W. Cobb, Jr.
Thomas D. Amrine
Jeffrey I. Ryen
Jenner & Block
601 Thirteenth Street, N.W.
12th Floor
Washington, D.C. 20005

Mary L. Brown
Keith L. Seat
Karen T. Reidy
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

OmniCall

Kim Robert Scovill, Esquire
Vice President-Regulatory Affairs
OmniCall, Inc.
430 Woodruff Road, Suite 450
Greenville, SC 29607

PCIA

Robert L. Hoggarth
Angela E. Giancarlo
The Paging and Messaging Alliance
of the Personal Communications
Industry Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561

Radiofone

Harold Mordkofsky
Susan J. Bahr
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, NW, Suite 300
Washington, DC 20037

Sprint

Leon M. Kestenbaum
Vice President, Federal Regulatory Affairs
Sprint Communications Company L.P.
1850 M Street, NW
Washington, DC 20036

Philip L. Verveer
Sue D. Blumenfeld
Thomas Jones
Gunnar Halley
Jay Angelo
Sophie Keefer
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036-3384

State Communications

Hamilton E. Russell, III
Vice President-Regulatory Affairs
& General Counsel
State Communications, Inc.
200 North Main Street
Suite 303
Greenville, SC 29601

	<p>Dana Frix Robert V. Zener Swidler Berlin Shereff Friedman, LLP 3000 K Street, NW, Suite 300 Washington, DC 20007</p>
Telecommunications Resellers Association	<p>Charles C. Hunter Catherine M. Hannan Hunter Communications Law Group 1620 I Street, N.W. Suite 701 Washington, D.C. 20006</p>
Time Warner	<p>Brian Conboy Thomas Jones A. Renee Callahan Willkie Farr & Gallagher Three Lafayette Centre 1155 21st Street, NW Washington, DC 20036</p>
Triangle Coalition	<p>Walter L. Purdy Triangle Coalition for Science and Technology Education 5112 Berwyn Road College Park, MD 20740-4129</p>
U S WEST Communications, Inc.	<p>John L. Taylor Suite 700 1020 19th Street, NW Washington, DC 20036</p>
WorldCom, Inc.	<p>Catherine R. Sloan Richard L. Fruchterman, III Richard S. Whitt WorldCom, Inc. 1120 Connecticut Avenue, N.W. Washington, D.C. 20036-3902</p> <p>Andrew D. Lipman Robert V. Zener Swidler & Berlin, Chartered 3000 K Street, N.W., Suite 300 Washington, D.C. 20007-5116</p>